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Dear Mr Bowd,

**Treasury Consultation Paper: Increasing the Statutory Demand Threshold**

Thank you for the opportunity to provide a response in relation to whether the Commonwealth Government (the Government) should permanently raise the minimum threshold at which creditors can issue a statutory demand on a company.

As a leading professional services firm, KPMG Australia (KPMG) is committed to meeting the requirements of all our stakeholders – not only the organisations we audit and advise, but also employees, governments, regulators and the wider community. We strive to contribute to debate that seeks to develop a strong and prosperous economy and welcome the opportunity to provide a submission to this inquiry.

KPMG has one of the largest restructuring services practices in Australia and around the world. We provide restructuring, turnaround and insolvency services to a wide range of clients from small and medium businesses to large institutional and multi-national organisations. We strive to contribute to the development of reliable and practical insolvency procedures to assist Australian businesses facing financial difficulty so that they may contribute to a strong and prosperous economy.

A statutory demand is a creditor's formal, written request under section 459E of the Corporations Act requiring a company to pay a debt that is due and payable. The central function of a statutory demand is to establish proof of a company's inability to pay its debts. It does so by creating a rebuttable statutory presumption of insolvency where a company fails to respond to a demand that has been served upon it.



In response to the economic impact of COVID-19, the Government temporarily raised the threshold at which a statutory demand could be issued to \$20,000. It also temporarily increased the timeframe that creditors had to respond to a statutory demand, to six months. The intent of these changes was to lessen the threat of actions that could push otherwise viable businesses into insolvency. Originally due to expire on 25 September 2020, the temporary increase was later extended to 31 December 2020, after which the small business insolvency reforms commenced.

During this period, the measures adopted by the Government have largely been successful in stemming the expected wave of insolvency related business failure. As a general proposition, the issuance of a statutory demand provides a simple and convenient method of establishing a company's insolvency. Non-compliance with a statutory demand allows a creditor to formally commence wind up proceedings. In the absence of this cost-effective method, on a year on year comparison, winding up applications commenced by creditors have been reduced by greater than 80%.

KPMG understands that there may be a view that the current limit of \$2,000 is low given that the level has not been adjusted since 1992. However, in practice, it is KPMG's experience that winding up proceedings often do not commence for debts smaller than \$10,000 due to the legal costs involved. Whilst it is ultimately a decision for individual creditors as to whether to commence a winding up application, the ability to issue a statutory demand provides those creditors with a cost-effective option to attempt to recover their debts.

While it is important to allow individual creditors the ability to attempt to recover debts, we do consider there is some merit in increasing the statutory minimum threshold to keep up with inflation. According to the RBA's inflation calculator, a basket of goods valued at \$2,000 in 1992 would be worth \$3,878 in 2020. Consequently, to lower compliance costs we suggest that the new threshold be set at \$4,000 with a five-yearly review period rather than being updated annually.

While indexing the threshold may address the changes in the real value of the threshold over time, an indexed amount may increase compliance costs as guidance documents and other public facing information would require annual updating. This could create confusion in the marketplace if parties are relying on out of date information and consequently KPMG do not support annual indexing in line with inflation.

We also understand that some may argue to increase the threshold to \$10,000 to be in line with personal bankruptcy, however the benefits of aligning the schemes to lower complexity across the profession are considered very low. There may be benefit for harmony across the regimes that supports individuals who run small businesses that need to engage with both regimes where their business is in financial distress, however the benefit is considered small.

Where the statutory threshold is increased to over \$4,000 this would effectively limit the ability of creditors (many who are small businesses themselves) to chase debts under \$4,000. The Government also needs to be mindful that increasing the statutory demand threshold beyond \$4,000 may have the perverse outcome of removing some of the incentive for business to pay small debts, this is because the ability to issue a statutory demand is important to the debt collection process.



If more businesses did not pay smaller debts due to the threshold increasing, these debts could compound, adversely impacting creditors that are small businesses themselves across the country. Therefore, we believe the fairest way forward for all parties involved is to leave the decision to issue proceedings with the creditor and increase the statutory demand threshold in line with inflation to \$4,000.

We hope these insights have been valuable and we would be happy to discuss this submission further at any stage.

Yours sincerely,

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KPMG Australia